

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN McMURRY,

Plaintiff,

Case No. 10-13357

Honorable Denise Page Hood

v.

VERNON STEVENSON, et al.,

Defendants.

**ORDER GRANTING MOTION FOR VOLUNTARY DISMISSAL OF ACTION,
ORDER REGARDING REPORT AND RECOMMENDATION,
AND
ORDER DISMISSING ACTION WITHOUT PREJUDICE**

Magistrate Judge Charles Binder issued a Report and Recommendation dated September 29, 2010. On October 8, 2010, Plaintiff John McMurry filed a Motion to Voluntary Dismissal of Action. McMurry seeks to voluntarily dismiss his action without prejudice to allow him to fully cure the defects pointed out by the Magistrate Judge in his Report and Recommendation. McMurry indicates that none of the Defendants have been served in this matter.

Rule 41(a) of the Rules of Civil Procedure provides that a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A). As noted by the Magistrate Judge, the action is subject to the screening provisions under 28 U.S.C. §§ 1915A, 1915(e) and 42 U.S.C. § 1997e(c)(1) given that McMurry is a prisoner and sought (and was granted) to proceed without prepayment of fees. The Magistrate Judge recommends in his Report and Recommendation that McMurry's Complaint be dismissed with prejudice because the Complaint violates Fed. R. Civ. P. 8(a)(2) and the rules governing joinder of claims and defendants under Fed. R. Civ. P. 18 and 20.

Liberally construing and reviewing McMurry's Complaint, as required by *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court agrees with the Magistrate Judge that the Complaint violates Rule 8 and the rules governing joinder of claims and defendants under Rules 18 and 20. However, the Court will not dismiss the action with prejudice as recommended by the Magistrate Judge because McMurry is now seeking to dismiss the action without prejudice. The Court grants McMurry's request to dismiss the action without prejudice. In dismissing the action without prejudice, the Court makes no ruling on the effect of such dismissal, but notes Rule 41(a) states that a voluntary dismissal may operate as an adjudication on the merits. Fed. R. Civ. P. 41(a)(1)(A).

Accordingly,

IT IS ORDERED that Plaintiff's Motion to Voluntary Dismissal of Action (**No. 8, 10/8/2010**) is GRANTED.

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation (**No. 7, 9/29/10**) is ACCEPTED IN PART and REJECTED IN PART as noted above.

IT IS FURTHER ORDERED that the Motion for Substituted Service (**No. 3, 8/24/2010**) is MOOT.

IT IS FURTHER ORDERED that this action is DISMISSED without prejudice.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: October 29, 2010

I hereby certify that a copy of the foregoing document was served upon John McMurray, Reg. No. 223416, Lakeland Correctional Facility, 141 First St., Coldwater, MI 49036 on October 29, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager